

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.653 of 2022

Arising Out of PS. Case No.-33 Year-2003 Thana- DAWATH District- Rohtas

Rajesh Sharma, S/o Late Muni Sharma (Madan Sharma), Resident of Village-
Kabai, P.S.- Dawath, District- Rohtas at Sasaram.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna Bihar.
2. The State Sentence Remission Board through the Principal Secretary, Home Deptt., Govt of Bihar Patna.
3. The Joint Secretary- Cum- Director (Administration), Home Department (Prision), Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna Bihar.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna, Bihar.
6. The Inspector General, Jail and Reforms Services, Bihar, Patna, Bihar.
7. The Assistant Inspector General, Jail and Reforms Services, Bihar, Patna.
8. The Jail Superintendent, Open Jail Buxar, Bihar.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Umesh Prasad, Advocate
For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

19 15-07-2024 Heard Mr. Umesh Prasad, learned counsel for the

petitioner and Mr. Prabhu Narayan Sharma, learned AC to AG

for the State of Bihar.

2. The petitioner in the present writ application has
challenged the order dated 21.08.2019 passed by the State
Sentence Remission Board (hereinafter referred to as the
'Board/Remission Board') as contained in Annexure '4' to the
writ application whereby and whereunder the request of the



petitioner for his premature release in terms of the Government's remission policy has been rejected by applying clause '(iv)(ख)' of the Notification No. 3106 dated 10.12.2002. The petitioner was convicted vide judgment dated 30.04.2005 and sentenced vide order dated 03.05.2005 by learned 3rd Additional District Judge, Fast Track Court, Rohtas at Sasaram in connection with Sessions Trial No. 375 of 2003 arising out of Dawath P.S. Case No. 33 of 2003 for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned counsel for the petitioner submits that it would appear from the counter affidavit of the State that in its meeting held on 19.05.2021, the Board once again considered the case of the petitioner. From the endorsements made in different columns of the consideration given to the case of the petitioner, it would appear that the reports of the Jail Superintendent, Superintendent of Police and the Probation Officer were in favour of the petitioner. These authorities had no objection to the premature release of the petitioner but the report of the learned Presiding Officer of the Board was not favourable. The learned Presiding Officer recorded in his note that it is a case of pre-planned murder, therefore, it would not be



in accordance with law to release the petitioner giving him benefit of the remission policy.

4. Learned counsel submits that from the further endorsements made in Columns '14', '15' and '16' of Annexure 'A' to the counter affidavit in respect of this petitioner, it would appear that while his request was rejected by the Board in its meeting held on 21.08.2019 by citing clause '(iv)(ख)' of the Notification No. 3106 dated 10.12.2002, in the subsequent meeting dated 23.12.2020, the Board decided to grant the benefit of premature release to the petitioner despite adverse opinion of the learned Presiding Officer of the Board in the light of the judgment of this Court in **Cr.WJC No. 272 of 2017 (Ravi Pratap Mishra Vs. The State of Bihar and Others)** but his release was allowed subject to a condition that the petitioner would keep on marking his attendance regularly in the local police station every month for a period of two years. It is submitted that there is no information in the counter affidavit as to why despite the decision of the Board taken to the aforesaid effect in its meeting on 23.12.2020, the petitioner was not released. It, however, appears from Column '16' that in its meeting held on 19.05.2021, the Board decided to obtain a report afresh from the Superintendent of Police, the Probation



Officer and the Presiding Officer of the Board. It was directed that the records be put up before the Board with the aforesaid reports.

5. Learned counsel submits that after the aforesaid decision of the Board taken on 19.05.2021, no further progress could be made for more than a year and the matter remained pending without consideration. The petitioner has filed I.A. No. 1 of 2022 to challenge the decision dated 19.05.2021 passed by the Board. The petitioner has filed yet another interlocutory application being I.A. No. 2 of 2023 by which he has challenged the decision dated 09.09.2022 taken by the Board whereunder the Board has once again rejected the proposal of the petitioner for premature release on the ground of adverse report of the learned Presiding Officer of the Board.

6. Mr. Prabhu Narayan Sharma, learned AC to AG for the State submits that since this Court has already held that the Government's policy as contained in Notification No. 3106 dated 10.12.2002 would be applicable only in the cases decided after 25.09.2007 as prior to that, this policy was not implemented and made applicable to others, therefore, the Remission Board was required to consider the case of the petitioner in the light of the judgment of this Court.



7. On a query made by this Court as to whether the Remission Board has taken into consideration the judgments of the Hon'ble Supreme Court such as **Laxman Naskar Vs. State of West Bengal and Another** reported in (2000) 7 SCC 626 and **Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and Others** reported in AIR 2023 Supreme Court 4084, it is submitted that the impugned order is at least not showing such consideration.

8. Having regard to the fact that the Board had already taken a decision in its meeting held on 23.12.2020 to release the petitioner giving him benefit of premature release in the light of the judgment of this Court in Cr.WJC No. 272 of 2017, it was incumbent upon the State to show as to why this decision was not given effect to and after five months, the Board once again took a decision to place the record afresh. No valid reason has been shown to this Court. Moreover, it appears that the only reason given by the learned Presiding Officer of the court for not recommending the case of the petitioner for his pre-mature release does not confirm to the ratio of the judgment of the Hon'ble Supreme Court in the case of **Laxman Naskar** (supra).

9. In **Laxman Naskar** (Supra), the Hon'ble Supreme Court observed five guiding factors. In **Rajo @ Rajwa @**



Rajendra Mandal (Supra), the Hon'ble Supreme Court took note of a recent judgment of the Hon'ble Supreme Court in the case of **Ram Chander Vs. State of Chhattisgarh and Another** reported in **AIR 2022 SC 2017** wherein the opinion of the Presiding Judge and its importance have been discussed. The Hon'ble Supreme Court has held that the opinion of the Presiding Judge is only a relevant factor which does not have any determinative effect on the application for remission. Paragraphs '21' and '22' of the judgment in **Ram Chander** (Supra) have been quoted in the judgment of **Rajo @ Rajwa @ Rajendra Mandal** (Supra). Those two paragraphs are being reproduced hereunder for a ready reference:-

“**21.** However, this is not to say that the appropriate Government should mechanically follow the opinion of the Presiding Judge. If the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) or if the Judge does not consider the relevant factors for grant of remission that have been laid down in *Laxman Naskar v. Union of India* [*Laxman Naskar v. Union of India*, (2000) 2 SCC 595 : 2000 SCC (Cri) 509 : (AIR 2000 SC 986)], the Government may request the Presiding Judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the Presiding Judge took into



account the factors which have been laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509 : (AIR 2000 SC 986)]. These factors include assessing:

- (i) whether the offence affects the society at large;
- (ii) the probability of the crime being repeated;
- (iii) the potential of the convict to commit crimes in future;
- (iv) if any fruitful purpose is being served by keeping the convict in prison; and
- (v) the socio-economic condition of the convict's family.

In Laxman Naskar v. State of W.B. [Laxman Naskar v. State of W.B., (2000) 7 SCC 626 : 2000 SCC (Cri) 1431 : (AIR 2000 SC 2762)] and State of Haryana v. Jagdish [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806 : (AIR 2010 SC 1690)], this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.”

10. Keeping in view the aforesaid observations, this Court passes the following order:-

- (i) I.A. No. 1 of 2022 and I.A. No. 2 of 2023 are being allowed as there is no objection to the same.



(ii) This Court finds that the Board having taken a decision on 23.12.2020 to recommend premature release of the petitioner in the light of the judgment of this Court in Cr.WJC No. 272 of 2017 had already become a *functus officio* and that recommendation was required to be considered by the Government. It is not known why the recommendation of the Board was not sent to the Government and after five months a fresh recommendation was made to place the records with further opinions and after receipt of the further opinions, the Board rejected the request of the petitioner for premature release. While doing so, the Board has not looked into the judgments of the Hon'ble Supreme Court in the case of **Laxman Naskar** (Supra) and **Rajo @ Rajwa @ Rajendra Mandal** (Supra) wherein guidelines have been provided as to what are the factors to be looked into for purpose of submission of the report by various authorities.

(iii) To this Court, it is also evident and there is no opposition to this that the date of conviction in this case being 30.04.2005, the Government's remission policy as contained in Notification No. 3106 dated 10.12.2002 which could be implemented only with effect from 25.09.2007, was not applicable and rejection of the request of the petitioner citing clause (iv)(ख) of the said notification is not correct.



11. This Court, therefore, sets aside the impugned order as contained in Annexure '4' to the writ application and the decision dated 09.09.2022 of the Board copy of which has been enclosed with the I.A. No. 2 of 2023.

12. The Remission Board is directed to consider the case of the petitioner afresh keeping in view the date of applicability of the Notification No. 3106 dated 10.12.2002 and the judicial pronouncements on the subject. Such decision shall be taken within a period of two months from the date of receipt/production of a copy of this order.

13. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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